IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

WP(C).No. 26023 of 2006(W)

PETITIONER:

VALSALA T.M.,
W/O.LATE KUNHIKRISHNAN NAIR, THEKKAYIL HOUSE,
PERAMBRA P.O., KOZHIKODE DISTRICT.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

1. KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD, TRIVANDRUM, REPRESENTED BY ITS
SECRETARY, T.C.NO.28/2781, `RAJASREE',
CHETTIKULANGARA, TRIVANDRUM-1.

2. THE QUILANDY TALUK AGRICULTURAL
CO-OPERATIVE MARKETING SOCIETY LTD.NO.F.1786,
PERAMBRA, KOZHIKODE, REPRESENTED BY ITS
SECRETARY.

3. JOINT REGISTRAR (GENERAL),
CO-OPERATIVE SOCIETIES, CALICUT.

4. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, CALICUT.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER
SENIOR GOVERNMENT PLEADER, SRI P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	TRUE COPY OF LETTER NO.PB/P2/PD/85/01/KKD DATED 29/05/2002 ISSUED BY 1ST RESPONDENT TO 2ND RESPONDENT
EXT.P2	TRUE COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 01/08/2002
EXT.P3	TRUE COPY OF REPLY NOTICE ISSUED BY THE SOCIETY TO THE COUNSEL FOR THE PETITIONER DATED10/01/2003
EXT.P4	TRUE COPY OF NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 25/10/2001
EXT.P5	TRUE COPY OF LETTER DATED 09/07/2004 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
EXT.P6	TRUE COPY OF REPRESENTATION DATED 28/01/2006 SUBMITTED BY PETITIONER TO THE 1ST RESPONDENT
EXT.P7	TRUE COPY OF REPRESENTATION DATED 06/04/2006 SUBMITTED BY PETITIONER TO THE 4TH RESPONDENT

RESPONDENT'S EXHIBIT:-

EXT.R2(a)	TRUE COPY OF THE TENDATIVE BALANCE SHEET OF THE 2ND RESPONDENT SOCIETY AS ON 31/03/2006

\\TRUE COPY //

P.A TO JUDGE

J.M.JAMES, J.

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W.P.(C) No. 26023 of 2006 (W)

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Dated this the 23rd day of November, 2006

J U D G M E N T

The writ petitioner is the widow of a deceased employee of the second respondent Society. The term of employment of the deceased, his death and his entitlement to the pension are not disputed. However, due pension has not been disbursed because the required contribution, that had to be made by the second respondent, was not remitted. Exhibit P1 is a communication of the first respondent, addressed to the second respondent, to remit an amount of Rs.71,270/-, so that the pension could be disbursed to the writ petitioner. When the pension was not paid, though the husband of the writ petitioner died on 06/07/2000, she is before this Court, through this writ petition, praying to direct the first respondent, to sanction the family pension and other benefits, with the arrears thereof, to her, within a time frame, to be fixed by this Court and also to direct the second respondent, the employer of the husband of the writ petitioner, to remit the due contributions, to the first

respondent.

2. I heard the arguments advanced by both sides.

3. Relying on the counter affidavit, filed by the second respondent, learned counsel Mr.Babu Joseph Kuruvathazha, submitted that at paragraph (3) of the counter it is stated that a total amount of Rs.28,342/- had been remitted to the first respondent, towards the pension fund contribution of the first respondent, as per 'the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994', in short 'the Pension Scheme'. It is also submitted that at paragraph (4) of the same counter, filed by the second respondent, it is stated that an amount of Rs.71,270/- is calculated and demanded through Exhibit P1 by the first respondent, after adding an interest at the rate of 24% per annum, for an amount which is already remitted by the second respondent to the first respondent.

4. The learned counsel appearing for the writ petitioner submitted that even from the counter of the second respondent, as described in paragraph (3), it is clear that the remittances were made by the second respondent, after

considerable delay and, therefore, under clause 38 of the Pension Scheme the first respondent could recover the amount due from the second respondent with 24% interest per annum, through the District Collector, as if it is a recovery to be effected in the same manner as arrears on land by the Revenue Department. Obviously, a question arises that when the second respondent employer fails to contribute, as contained under Clause (3) of the Pension Scheme, or short remits, or remits the amount without the interest, whether the first respondent could withdraw the disbursal of the family pension under clause 23 of the Pension Scheme, till such time the employer of the deceased employee remits the amount due to the first respondent.

5. The Apex Court had an occasion to consider the payment of pension to the entitled persons on the death of any one of their bread earners. In **Smt.Poonamal and others vs.Union of India and others** [1985(3) SCC 345], the court held that 'pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a

matter of right. This principle has been followed in **All India Reserve Bank Retired Officers Association and others, Petitioners vs.Union of India and others, Respondents**, [AIR 1992 SC 767].

6. After the death of the husband of the writ petitioner on 06/07/2000, the writ petitioner had been waiting so far. The second respondent submits that it had remitted the amount on the date mentioned, as stated above. However, if any amount is due from the second respondent, first respondent, Pension Board, shall not hold back the pension, till the remittance is effected by the second respondent. The first respondent shall proceed against the second respondent under clause 38 of the Pension Scheme and, in the meanwhile, it shall pay all the entitlements, due to the writ petitioner, consequent to the documents and details supplied to it, by both the second respondent employer as well as the petitioner herself.

7. In the above circumstances, I dispose of the writ petition, directing the first respondent to disburse the family pension, as would be calculated under clause 23 of the Pension Scheme, as early as possible, in any case, within two weeks from

the date of production of a copy of this judgment, before it.

8. The learned counsel for the second respondent submits that the entire remittances were made in the year 2000 itself. Therefore, the first respondent cannot demand exorbitant interest in an arbitrary manner, at the rate of 24% per annum. I make no observations on this aspect, as it is for the second respondent to establish that it had complied with the Pension Scheme and made remittances before the first respondent. The first respondent, on any such receipts, is to release the entitlements, as per the Pension Scheme.

This writ petition is closed as above.

(J.M.JAMES)
Judge

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